IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1949 OF 2005

Vimal Raj Mathur ...Petitioner
Vs.
Mr Pradip Kumar Kapani & Ors. ...Respondents

Shri Rishi Bhuta for the Petitioner.
Shri Pradip Kumar Kapani-Respondent No.1- in person.

CORAM : A.M. KHANWILKAR, J.
DATE : DECEMBER 02, 2005.

P.C.:

1. Heard the learned Counsel parties. Perused the relevant evidence on record and also the deposition of the Petitioner tendered across the Bar by the Counsel for the Petitioner. In my opinion, no fault can be found with the order passed by the Lower Court in rejecting the Application referred by the Petitioner for forwarding the subject cheque for handwriting expert's opinion. This is so because the signature on the cheque is not in dispute. The Petitioner has accepted that the signature occurring on the subject cheque is signed by him as is noted during recording examination-in-chief of the Respondent-Complainant at page 18 of the Paper Book. The Petitioner entered the witness-box and at no point of time has denied signing the cheque in question. On the other hand, the statement would indicate that he had signed the cheque, but under threats from underworld.

2. Viewed in this perspective, there is no dispute that the cheque in question was signed by the Petitioner. Indeed, the Petitioner has made an attempt to deny the signature occurring on the cheque while recording statement under section 313 of the Code, but that denial will be of no avail to the Petitioner in view of the positive evidence which I referred to earlier. Once it is accepted that the cheque in question is signed by the Petitioner, assuming that the Petitioner was to deny the writing on the cheque, it is matter for trial whether blank cheque was issued by the Petitioner after putting his signature for facilitating the complainant to fill in other details which course was permissible in terms of section 20 of the Negotiable Instruments Act, 1881. It will be a different matter if the complainant exceeded his authority. All these aspects will be matter for trial. Suffice it to observe that in the facts of the present case it was wholly unnecessary for the Trial Court to forward the cheque to handwriting expert for his opinion.

3. Counsel for the Petitioner placed reliance on the decision of the Andhra Pradesh High Court in the case of Avon Organics, Hyd. Ltd. Vs. Poineer

Products Ltd. & Ors. reported in 2003 ALL MR(Cri) Journal, 105 to contend that the issuance of blank cheque towards legally enforceable debt or liability without mentioning the amount does not constitute a cheque. Counsel for the Petitioner, however, fairly accepts that this decision does not consider the purport of section 20 of the Negotiable Instruments Act, 1881 for the view that I have already taken, no interference is warranted in the present Petition.

4. Petition is disposed of in above terms.

A.M.KHANWILKAR, J.